

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Pescetti Analyst: Marion Mann DeJong Bill Number: AB 572

Related Bills: _____ Telephone: 845-6979 Amended Date: 04/13/1999

Attorney Patrick Kusiak Sponsor: _____

SUBJECT: Taxpayer Bill of Rights/Conformity

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY OF BILL

This bill would generally conform to the following three provisions of the Internal Revenue Service Restructuring and Reform Act of 1998 and would:

- Shift the burden of proof for factual issues in court proceedings to the Franchise Tax Board (FTB), the Board of Equalization or the Employment Development Department, if the taxpayer meets specified criteria. In addition, would authorize FTB to require taxpayers to keep records, similar to the record-keeping requirement under federal law.
- Expand innocent spouse protections.
- Suspend the statute of limitations (SOL) for certain refund claims for periods during which the taxpayer is "financially disabled."

SUMMARY OF AMENDMENT

The April 13, 1999, amendments modified the burden of proof provisions as they relate to FTB to more closely conform to the federal provision and to address issues raised in the department's analysis of this bill as introduced February 19, 1999. Specifically, the amendments would:

- shift the burden of proof to FTB when FTB adjusts income through the use of statistical information on unrelated taxpayers and when penalties are imposed.
- not shift the burden of proof to the FTB for state tax adjustments resulting from federal audit changes.
- add record keeping requirements into California law.

The discussions of the Innocent Spouse and the SOL/Financial Disabled Taxpayer

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input checked="" type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Department/Legislative Director

Date

Johnnie Lou Rosas

5/3/1999

provisions in the department's analysis of the bill as introduced February 19, 1999, still apply. The Roth IRA discussion in the department's analysis of the bill as introduced no longer applies since the March 25, 1999, amendments deleted the Roth IRA provisions from the bill. Current law in Specific Findings for the Burden of Proof discussion in the department's analysis of the bill as introduced still applies; the rest of the department's analysis of the Burden of Proof provision is replaced with the following.

The department's analysis of the bill as amended March 25, 1999, is replaced with this analysis.

The position is changed from pending to neutral to reflect the action taken by the Franchise Tax Board.

BOARD POSITION

Neutral.

At its March 23, 1999, meeting, the Franchise Tax Board voted 2-0 to take a neutral position on this bill as introduced February 19, 1999.

Burden of Proof

EFFECTIVE DATE

This provision would be operative for court proceedings arising in connection with examinations commencing (or taxable periods or events beginning or occurring) after the effective date of this bill. The record-keeping requirement would be operative on the effective date of the bill.

SPECIFIC FINDINGS

This provision of the bill would shift the burden of proof for factual issues in court proceedings to the FTB if the taxpayer introduces credible evidence with respect to factual issues. For the burden of proof to shift, the taxpayer must:

- substantiate any item;
- keep records;
- cooperate with the FTB;
- exhaust all administrative remedies under California law, including any appeal to the BOE;
- meet the net worth limitations (\$7 million) if not an individual taxpayer.

The burden of proof would also shift to the FTB (1) when the FTB adjusts income through the use of statistical information on unrelated taxpayers and (2) when penalties or additions to tax are imposed.

The burden of proof would not shift to the FTB for issues resulting from (1) a change or correction by the Commissioner of the IRS or other officer of the United States or other competent authority or (2) an amended return filed with the Commissioner of the IRS.

This provision also would authorize FTB to require taxpayers to keep any records (books, papers, writings etc.), statements, returns or other information appropriate to determine the correct amount of tax reported on a tax return.

Policy Considerations

- This provision would not shift the burden of proof to the FTB for issues resulting from federal changes to continue the long-standing policy of reliance on federal information. Further, if all conditions are satisfied by the taxpayer, the IRS would have had the burden of proof for the federal audit.
- As is the case under federal law, it is unclear whether the burden of proof would shift if a partnership's net worth is less than \$7 million but the net worth of a partner (for example, a corporate partner) exceeds \$7 million.
- Taxpayers may find that the federal provision does not provide a significant benefit due to the mechanics of when and how the burden of proof shifts from the taxpayer. Further, taxpayers, misunderstanding the burden of proof provision, could fail to keep necessary documents.
- The provision to conform to the federal record-keeping requirements could be viewed by taxpayers as burdensome.
- Generally in civil cases the burden of proof is on the plaintiff, the party seeking corrective action. The taxpayer is the plaintiff in virtually all California Superior Court actions. In addition, for tax cases the taxpayer has control of the records and documents necessary to ascertain the taxpayer's tax liability.

Implementation

This provision could require FTB to engage in more extensive evidence gathering activities and would require the department to issue regulations relating to the record keeping provisions. This provision may require personnel additions to the legal staff. Further, shifting the burden of proof to the department may require longer retention of records and increased costs for storage.

FISCAL IMPACT

Departmental Costs

The departmental costs associated with this provision are unknown. The costs could increase, however, to the extent that additional supporting evidence would be required on all cases to support the state's position on any potential litigation cases.

Tax Revenue Estimate

Revenue losses for this provision in any given year are unknown. It appears that the IRS anticipates a negative revenue impact from self-assessed

reporting, which could have an effect on self-assessed state taxes and departmental audit programs regardless of whether the state conforms in this area. It is not possible to determine the number of cases in which the burden of proof would shift to the Franchise Tax Board to substantiate assessments in court.